

**STATE OF WASHINGTON**  
**Department of Ecology, Water Quality Program**  
**PO Box 47600, Olympia, Washington 98504**

**REQUEST FOR PROPOSALS**  
**RFP No. 0715 WQ**

**PROJECT TITLE:** Mixing Zone Evaluation

**PROPOSAL DUE DATE:**

Friday, February 9, 2007 by 4:00 p.m. local time in Lacey, Washington.

**EXPECTED TIME PERIOD FOR CONTRACT:** March 12, 2007 to June 30, 2007. Ecology reserves the right at its discretion, to extend the contract for up to three additional one-year periods.

**CONSULTANT ELIGIBILITY:** This procurement is open to those consultants that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

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# 1. INTRODUCTION

## 1.1 PURPOSE AND BACKGROUND

The Washington State Department of Ecology, Water Quality Program hereafter called "AGENCY," is initiating this Request for Proposals (RFP) to solicit proposals from firms interested in participating on the following project.

The Department of Ecology (AGENCY), in issuing wastewater discharge permits may authorize an area around the point of discharge called a mixing zone. Mixing zones are areas of a receiving water body in which the numeric water quality criteria may be exceeded provided there are no biological effects within the mixing zone. AGENCY authorizes mixing zones in accordance with its water quality regulations.

AGENCY is proposing to review its policies and guidance pertaining to mixing zones. This may lead eventually to change in regulation. As the first step of this process, AGENCY wants to collect existing information on the biological impacts of mixing zones and the methodology used by other agencies to access biological impacts within mixing zones.

Task 1 – Contact EPA regional offices and other States with NPDES delegation to determine which have conducted biological assessments of mixing zones. Collect paper or electronic copies of data and data reports from contact sources. It is expected that the EPA regional offices will be contacted initially to determine which states may have conducted such studies and that not all states will be contacted.

Task 2 – Compile and summarize any data produced by EPA or other States on the biological impact of mixing zones. The information should be separated by receiving water type and by industrial/municipal discharger. Ecology is primarily interested in data produced from mixing zones authorized for treated wastewater (secondary or equivalent); however, data from marine waiver cities may be acceptable if it is the only existing data.

Task 3 – Compile the biological assessment methods used to produce the data in Task 2. Using the results gathered in Task 2, available scientific literature, and expertise in bioassessment methods and evaluation of mixing zones and other potential stressors to aquatic systems develop a stratified list of sampling methods. These methods will be divided by water body type (e.g., marine, freshwater), pollutant type, and community type (e.g., presence of species of special concern). Depending on the discharge and receiving water, some situations may require more detailed monitoring than others (e.g., a large mixing zone containing multiple pollutants may require more detailed monitoring than a small mixing zone containing a single pollutant).

## 1.2 OBJECTIVE

The objective of this work is a report on the information collected in Tasks 1, 2 and 3 which will assist AGENCY in making decisions on mixing zone policy and guidance.

## 1.3 MINIMUM QUALIFICATIONS

The Consultant must be licensed to do business in the State of Washington. The Consultant must have a minimum of five (5) years experience in biological sampling in aquatic environments, and environmental consulting or engineering. Other desirable experience includes NPDES permitting and mixing zone modeling (PLUMES or COREMIX).

#### 1.4 FUNDING

The AGENCY has budgeted an amount not to exceed \$50,000 for this project.

Any contract awarded as a result of this procurement is contingent upon the availability of funding.

#### 1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about March 12, 2007 and to end on June 30, 2007. Amendments extending the period of performance, if any, shall be at the sole discretion of the AGENCY.

#### 1.6 DEFINITIONS

Definitions for the purposes of this RFP include:

**AGENCY** – The Department of Ecology is the agency of the State of Washington that is issuing this RFP.

**Consultant** – Individual or company submitting a proposal in order to attain a contract with the AGENCY.

**Contractor** – Individual or company whose proposal has been accepted by the AGENCY and is awarded a fully executed, written contract.

**Proposal** – A formal offer submitted in response to this solicitation.

**Request for Proposals (RFP)** – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the consultant community to suggest various approaches to meet the need at a given price.

#### 1.7 ADA

The AGENCY complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFP Coordinator to receive this Request for Proposals in Braille or on tape.

## 2. GENERAL INFORMATION FOR CONSULTANTS

#### 2.1 RFP COORDINATOR

The RFP Coordinator is the sole point of contact in the AGENCY for this procurement. All communication between the Consultant and the AGENCY upon receipt of this RFP shall be with the RFP Coordinator, as follows:

Name	Jeff Killelea
Street Address	300 Desmond Drive SE
	Lacey, Washington 98503
Mailing Address	Dept. of Ecology, Water Quality Program PO Box 47600
City, State, Zip Code	Olympia, WA 98504-7600
Phone Number	360-407-6127
Fax Number	360-407-6426
E-Mail Address	<a href="mailto:Jkil461@ecy.wa.gov">Jkil461@ecy.wa.gov</a>

Any other communication will be considered unofficial and non-binding on the AGENCY. Consultants are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Consultant.

## 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals	1/18/07
Question and answer period	1/18/07 – 1/26/07
Last date for questions regarding RFP (optional)	1/26/07
Proposals due	2/9/07
Evaluate proposals	2/9/07 -2/23/07
Announce "Apparent Successful Contractor" and send notification via e-mail to unsuccessful proposers	2/26/07
Hold debriefing conferences (if requested)	2/26/07 – 2/28/07
Negotiate contract	2/26/07 -3/2/07
Begin contract work	3/12/07

The AGENCY reserves the right to revise the above schedule.

## 2.3 SUBMISSION OF PROPOSALS

Consultants are required to submit four (4) copies of their proposal. Two copies must have original signatures and two copies can have photocopied signatures. The proposal, whether mailed or hand delivered, must arrive at the AGENCY no later than 4:00 p.m., local time in Lacey, Washington, on February 9, 2007.

The proposal is to be sent to the RFP Coordinator at the address noted in Section 2.1. The envelope should be clearly marked to the attention of the RFP Coordinator.

Consultants mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator. Consultants assume the risk for the method of delivery chosen. The AGENCY assumes no responsibility for delays caused by any delivery service. Proposals may not be transmitted using electronic media such as facsimile transmission.

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of the AGENCY and will not be returned.

## 2.4 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Materials submitted in response to this competitive procurement shall become the property of the AGENCY.

All proposals received shall remain confidential until the contract, if any, resulting from this RFP is signed by the Director of the AGENCY and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in RCW 42.17.250 to 42.17.340, "Public Records."

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.17.250 to 42.17.340 must be clearly designated. The page must be identified and the particular exception from disclosure upon which the Consultant is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

The AGENCY will consider a Consultant's request for exemption from disclosure; however, the AGENCY will make a decision predicated upon chapter 42.17 RCW and chapter 143-06 of the Washington Administrative Code. Marking the entire proposal exempt from disclosure will not be honored. The Consultant must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected proposer has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping, as outlined in RCW 42.17.300. No fee shall be charged for inspection of contract files, but twenty-four (24) hours notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

## **2.5 REVISIONS TO THE RFP**

In the event it becomes necessary to revise any part of this RFP, addenda will be provided via posting to the AGENCY Website at <http://www.ecy.wa.gov> and on the Department of General Administration WEBS website at: <https://fortress.wa.gov/ga/webs/bidcalendar.aspx>

The AGENCY also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract.

## **2.6 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION**

In accordance with the legislative findings and policies set forth in chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award and proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

The established annual procurement participation goals for MBE is 8 percent and for WBE, 4 percent, for this type of project. These goals are voluntary. Bidders may contact OMWBE at 360/753-9693 to obtain information on certified firms.

## **2.7 ACCEPTANCE PERIOD**

Proposals must provide 60 days for acceptance by AGENCY from the due date for receipt of proposals.

## **2.8 RESPONSIVENESS**

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Consultant is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

The AGENCY also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

## **2.9 MOST FAVORABLE TERMS**

The AGENCY reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the

Consultant can propose. There will be no best and final offer procedure. The AGENCY does reserve the right to contact a Consultant for clarification of its proposal.

The Consultant should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or all of the Consultant's proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the AGENCY.

## **2.10 CONTRACT AND GENERAL TERMS & CONDITIONS**

The apparent successful contractor will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event

is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. The Consultant may submit exceptions as allowed in the Certifications and Assurances section, Exhibit A to this solicitation. The AGENCY will review requested exceptions and accept or reject the same at its sole discretion.

#### **2.11 COSTS TO PROPOSE**

The AGENCY will not be liable for any costs incurred by the Consultant in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP

#### **2.12 NO OBLIGATION TO CONTRACT**

This RFP does not obligate the State of Washington or the AGENCY to contract for services specified herein.

#### **2.13 REJECTION OF PROPOSALS**

The AGENCY reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP.

#### **2.14 COMMITMENT OF FUNDS**

The Director of the AGENCY or his delegate are the only individuals who may legally commit the AGENCY to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

#### **2.15 ELECTRONIC PAYMENT**

The State of Washington prefers to utilize electronic payment in its transactions. The successful contractor will be provided a form to complete with the contract to authorize such payment method.

#### **2.16 INSURANCE COVERAGE**

The Contractor is to furnish the Agency with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to the Agency within fifteen (15) days of the contract effective date.

#### **Liability Insurance**

- 1) **Commercial General Liability Insurance:** Contractor shall maintain general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

- 2) **Business Auto Policy:** As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

### **Employers Liability (“Stop Gap”) Insurance**

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

### **Additional Provisions**

Above insurance policy shall include the following provisions:

1. **Additional Insured.** The State of Washington, Department of Ecology, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.
2. **Cancellation.** State of Washington, Department of Ecology, shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
3. **Identification.** Policy must reference the State's contract number and the agency name.
4. **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by [Agency Name] Risk Manager, or the Risk Manager for the State of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapter 48.15 RCW and 284-15 WAC.
5. **Excess Coverage.** By requiring insurance herein, the State does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the State in this contract.

### **Worker's Compensation Coverage**

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The State will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

## **3. PROPOSAL CONTENTS**

Proposals must be submitted on eight and one-half by eleven (8 1/2 x 11) inch paper with tabs separating the major sections of the proposal. The four major sections of the proposal are to be submitted in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP).
2. Technical Proposal.
3. Management Proposal.
4. Cost Proposal.



Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Consultant in preparing a thorough response. The document shall be printed in 12 point font on no more than 20 double sided sheets. Resumes shall be included as appendices in addition to the page limit and shall be limited to one (1) page per staff member. Proposals that do not meet the format requirements will be considered non-responsive and will not be evaluated.

Items in this section marked “mandatory” must be included as part of the proposal for the proposal to be considered responsive; however, these items are not scored. Items marked “mandatory/scored” are those that are awarded points as part of the evaluation conducted by the evaluation team.

### **3.1 LETTER OF SUBMITTAL (MANDATORY)**

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Consultant and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
3. Legal status of the Consultant (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
4. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the State of Washington Department of Revenue.
5. Location of the facility from which the Consultant would operate.
6. Identify any State employees or former State employees employed or on the firm’s governing board as of the date of the proposal. Include their position and responsibilities within the Consultant’s organization. If following a review of this information, it is determined by the AGENCY that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.

### **3.2 TECHNICAL PROPOSAL (MANDATORY/SCORED)**

The Technical Proposal must contain a comprehensive description of services including the following elements:

- A. Project Approach/Methodology** – Include a complete description of the Consultant’s proposed approach and methodology for the project. This section should convey Consultant’s understanding of the proposed project.
- B. Project Schedule** – Include a project schedule indicating when the elements of the work will be completed and when deliverables, if any, will be provided.
- C. Deliverables** – Fully describe deliverables to be submitted under the proposed contract.

### **3.3 MANAGEMENT PROPOSAL**

#### **A. Project Management (MANDATORY/SCORED)**

1. **Staff Qualifications/Experience** – Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide resumes’ for the named staff, which include information on the individual’s particular skills related to this project, education, experience, significant accomplishments and any other

pertinent information. The Consultant must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the AGENCY.

**B. Experience of the Consultant (MANDATORY/SCORED)**

1. Indicate the experience the Consultant and any subcontractors have in the following areas: water quality, aquatic biology, hydrology, environmental engineering or wastewater permitting.
2. Indicate other relevant experience that indicates the qualifications of the Consultant, and any subcontractors, for the performance of the potential contract.
3. Include a list of contracts the Consultant has had during the last five years that relate to the Consultant's ability to perform the services needed under this RFP. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.

**C. References (MANDATORY/SCORED)**

List names, addresses, telephone numbers, and fax numbers/e-mail addresses of three business references for whom work has been accomplished and briefly describe the type of service provided. The Consultant must grant permission to the AGENCY to contact the references. Do not include current AGENCY staff as references. References will be contacted for the top-scoring proposal(s) only.

**D. Related Information (MANDATORY)**

1. If the Consultant or any subcontractor contracted with the State of Washington during the past 24 months, indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
2. If the Consultant's staff or subcontractor's staff was an employee of the State of Washington during the past 24 months, or is currently a Washington state employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
3. If the Consultant has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Consultant's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Consultant's position on the matter. The AGENCY will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Consultant in the past five years, so indicate.

**E. OMWBE Certification (Optional)**

Include proof of certification issued by the Washington State Office of Minority and Women-Owned Business if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

### **3.4 COST PROPOSAL (MANDATORY/SCORED)**

The maximum fee for this contract must be **\$50,000** or less to be considered responsive to this RFP.

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFP. However, Consultants are encouraged to submit proposals which are consistent with State government efforts to conserve state resources.

#### **A. Identification of Costs (SCORED)**

Identify all costs including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The Consultant is to submit a fully detailed budget including staff costs and any expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Consultants are required to collect and pay Washington state sales tax, if applicable.

Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the Office of Minority and Women's Business Enterprises.

The following space is intentionally blank

## 4. EVALUATION AND CONTRACT AWARD

### 4.1 EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team, to be designated by the AGENCY, which will determine the ranking of the proposals.

AGENCY, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation.

### 4.2 EVALUATION WEIGHTING AND SCORING

## EVALUATION SCORING SHEET FOR WRITTEN PROPOSALS RFP NO. 0715 WQ SAMPLE

EVALUATION FACTORS	Maximum Points Possible	
<hr/>		
1. TECHNICAL PROPOSAL (50%)		
a) Proposed project approach & methodology	20	<hr/>
b) Feasibility of proposed schedule	50	<hr/>
c) Description of proposed deliverables	30	<hr/>
SUBTOTAL FOR THIS SECTION	100	
<hr/>		
2. MANAGEMENT PROPOSAL (50%)		
a) Staff qualifications & experience	50	<hr/>
b) Consultant's relevant experience	50	<hr/>
SUBTOTAL FOR THIS SECTION	100	
<hr/>		
<b>TOTAL POSSIBLE SCORE</b>	<b>200</b>	
<hr/>		
3. REFERENCES		
Checked for top scoring proposer(s) only. (Total possible points)	10	
<hr/>		
<b>FINAL SCORE –Total Possible Points</b>	<b>210</b>	

References will be contacted for the top-scoring proposer(s) only and will then be scored and added to the total score.

#### **4.3 ORAL PRESENTATIONS MAY BE REQUIRED**

Written submittals and oral presentations, if considered necessary, will be utilized in selecting the winning proposal. The AGENCY, at its sole discretion, may elect to select the top scoring finalists from the written evaluation for an oral presentation and final determination of contract award. Should the AGENCY elect to hold oral presentations, it will contact the top-scoring firm(s) to schedule a date, time and location. Commitments made by the Consultant at the oral interview, if any, will be considered binding. The score from the oral presentation will be considered independently and will determine the apparently successful proposer.

#### **4.4 NOTIFICATION TO PROPOSERS**

Firms whose proposals have not been selected for further negotiation or award will be notified via by e-mail.

#### **4.5 DEBRIEFING OF UNSUCCESSFUL PROPOSERS**

Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Notification of Unsuccessful Consultant letter is e-mailed to the Consultant. The debriefing must be held within three (3) business days of the request.

Discussion will be limited to a critique of the requesting Consultant's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

#### **4.6 PROTEST PROCEDURE**

This procedure is available to Consultants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Consultant is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests may be submitted by email, but should be followed by the original document.

Consultants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Consultants under this procurement.

All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFP Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of the evaluator.
- Errors in computing the score.
- Non-compliance with procedures described in the procurement document or AGENCY policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) AGENCY'S assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by the AGENCY. The AGENCY director or an employee delegated by the Director who was not involved in the procurement will consider the record and all available facts and issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Consultant which submitted a proposal, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the AGENCY's action; or
- Find only technical or harmless errors in the AGENCY's acquisition process and determine the AGENCY to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the AGENCY options which may include:
  - Correct the errors and re-evaluate all proposals, and/or
  - Reissue the solicitation document and begin a new process, or
  - Make other findings and determine other courses of action as appropriate.

If the AGENCY determines that the protest is without merit, the AGENCY will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

## **5. RFP EXHIBITS**

Exhibit A     Certifications and Assurances

Exhibit B     Personal Service Contract with General Terms and Conditions

## **EXHIBIT A CERTIFICATIONS AND ASSURANCES**

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the AGENCY without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
5. I/we understand that the AGENCY will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the AGENCY, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

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Signature of Proposer

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Title

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Date

**EXHIBIT B - PERSONAL SERVICE CONTRACT WITH GENERAL TERMS AND  
CONDITIONS**

CONTRACT NO. [REDACTED]

**CONTRACT FOR PERSONAL SERVICES  
BETWEEN  
STATE OF WASHINGTON**

\_\_\_\_\_  
**AND**  
\_\_\_\_\_

This Contract is made and entered into by and between the state of Washington, [REDACTED], hereinafter referred to as the "**AGENCY**", and the below named firm, hereinafter referred to as "**CONTRACTOR.**"

\_\_\_\_\_  
**Contractor Name**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**City, State, Zip-Code**

\_\_\_\_\_  
**Phone**

\_\_\_\_\_  
**Fax**

\_\_\_\_\_  
**E-mail**

\_\_\_\_\_  
**Washington State UBI Number**

\_\_\_\_\_  
**Federal ID Number**

**PURPOSE**

The purpose of this contract is to: [REDACTED]

**SCOPE OF WORK**

- A. Exhibit A, attached hereto and incorporated by reference, contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the AGENCY and the CONTRACTOR, and specific obligations of both parties.



- B. The CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

*As included in the AGENCY'S Request for Proposals No. [REDACTED], attached as Exhibit B, and the CONTRACTOR'S proposal dated [REDACTED], attached as Exhibit C.*

- C. The CONTRACTOR shall produce the following written reports or other written documents (deliverables) by the dates indicated below:

All written reports required under this contract must be delivered to [REDACTED], the Contract Manager, in accordance with the schedule above.

### **PERIOD OF PERFORMANCE**

The period of performance under this contract will be from [REDACTED], or date of execution, whichever is later, through [REDACTED].

**NOTE:** *If the contract requires filing with the Office of Financial Management in accordance with Chapter 39.29 RCW, include one of the following paragraphs, as applicable.*

### **OFM FILING REQUIREMENT - (NOTE: Use either paragraph below as applicable – not both.)**

#### **10-Day Filing**

Under the provisions of Chapter 39.29 RCW, this personal service contract [or amendment] is required to be filed with the Office of Financial Management (OFM). No contract required to be so filed is effective and no work shall be commenced nor payment made until ten (10) working days following the date of filing, and if required, until approved by OFM. In the event OFM fails to approve the contract, the contract shall be null and void.

**OR:**

#### **Effective Date of Filing**

For competitive personal service contracts [or amendments] that are not subject to the ten working day filing period, the contract start date is the working day that the contract is filed, date of execution, or any day thereafter.

### **COMPENSATION**

Total compensation payable to CONTRACTOR for satisfactory performance of the work under this contract shall not exceed [REDACTED] (\$[REDACTED]). CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

**NOTE:** *List detail of compensation to be paid, e.g., hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc., or reference documents that specify CONTRACTOR'S compensation and payment, e.g., CONTRACTOR'S compensation for services rendered shall be based on the schedule set forth in Exhibit B, Fees and Expenses. Compensation section should be consistent with Billing Procedures.*

**NOTE:** *Expenses are optional. Do not include Expenses paragraph below if expenses are not allowable. If allowable, include only expenses that are appropriate for the contract.*

#### **Expenses**

CONTRACTOR shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by the AGENCY as reimbursable. The maximum amount to be paid to the CONTRACTOR for authorized expenses shall not exceed \$[REDACTED], which amount is included in the

contract total above. Such expenses may include: airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. CONTRACTOR shall receive compensation for travel expenses at current state travel reimbursement rates.

### **BILLING PROCEDURES AND PAYMENT**

AGENCY will pay CONTRACTOR upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Contract Manager [*not more often than monthly.*]

**NOTE:** *Payment can also be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the contract, payment at conclusion of the contract, etc.*

The invoices shall describe and document, to the AGENCY'S satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include reference to OFM Contract No. [REDACTED]. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

Payment shall be considered timely if made by the AGENCY within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

The AGENCY may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the AGENCY.

### **CONTRACT MANAGEMENT**

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this contract.

Contract Manager for CONTRACTOR is:	Contract Manager for AGENCY is:
Contract Mgr Name [REDACTED]	Contract Mgr Name [REDACTED]
Contractor Name [REDACTED]	Agency Name [REDACTED]
Address [REDACTED]	Address [REDACTED]
City, State Zip Code [REDACTED]	City, State Zip Code [REDACTED]
Phone: ([REDACTED]) [REDACTED] Fax: ([REDACTED]) [REDACTED]	Phone: ([REDACTED]) [REDACTED] Fax: ([REDACTED]) [REDACTED]
E-mail address: [REDACTED]	E-mail address: [REDACTED]

### **INSURANCE**

The CONTRACTOR shall provide insurance coverage as set out in this section [*for as set forth in the Request for Proposals No. [REDACTED]*]. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor, or agents of either, while

performing under the terms of this contract. The CONTRACTOR shall provide insurance coverage, which shall be maintained in full force and effect during the term of this contract, as follows:

1. Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence.

Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

2. Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is:

\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

3. The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give AGENCY thirty (30) calendar days advance notice of any insurance cancellation.

CONTRACTOR shall submit to AGENCY within fifteen (15) calendar days of the contract effective date, a certificate of insurance that outlines the coverage and limits defined in the *Insurance* section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

### **ASSURANCES**

AGENCY and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

### **ORDER OF PRECEDENCE**

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and state of Washington statutes and regulations;
- Special Terms and Conditions as contained in this basic contract instrument;
- Exhibit A – General Terms and Conditions;
- Exhibit B – Request for Proposals No. [REDACTED];
- Exhibit C – Contractor's Proposal dated [REDACTED]; and
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

### **ENTIRE AGREEMENT**

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

### **CONFORMANCE**

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

**APPROVAL**

This contract shall be subject to the written approval of the AGENCY'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of [ ] pages and [ ] attachment(s), is executed by the persons signing below, who warrant they have the authority to execute the contract.

**[CONTRACTOR'S NAME]**

**[AGENCY NAME]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Approved as to form only – Assistant Attorney General.**

## **GENERAL TERMS AND CONDITIONS**

### **DEFINITIONS**

As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "**AGENCY**" shall mean the (**AGENCY TITLE**) of the state of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- B. "**AGENT**" shall mean the Director, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "**CONTRACTOR**" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
- D. "**SUBCONTRACTOR**" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.

### **Access to Data**

In compliance with RCW 39.29.080, the CONTRACTOR shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions and recommendations of the CONTRACTOR'S reports, including computer models and methodology for those models.

### **Advance Payments Prohibited**

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the AGENCY.

### **Amendments**

This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### **Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, Also Referred to as the "ADA" 28 CFR Part 35**

The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

### **Assignment**

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the CONTRACTOR without prior written consent of the AGENCY.

### **Attorneys' Fees**

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

### **Confidentiality/Safeguarding of Information**

The CONTRACTOR shall not use or disclose any information concerning the AGENCY, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law.

### **Conflict of Interest**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by the AGENT that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the AGENCY shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of the AGENCY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the AGENT makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

### **Copyright Provisions**

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the AGENCY. The AGENCY shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, CONTRACTOR hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the AGENCY effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, CONTRACTOR hereby grants to the AGENCY a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the AGENCY.

The CONTRACTOR shall exert all reasonable effort to advise the AGENCY, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

The AGENCY shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any data delivered under this contract. The AGENCY shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

### **Covenant Against Contingent Fees**

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for securing business.

The AGENCY shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

### **Disallowed Costs**

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

### **Disputes**

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with AGENT.

1. The request for a dispute hearing must:
  - Be in writing;
  - State the disputed issue(s);
  - State the relative positions of the parties;
  - State the CONTRACTOR'S name, address, and contract number; and
  - Be mailed to the AGENT and the other party's (respondent's) contract manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within five (5) working calendar days.
3. The AGENT shall review the written statements and reply in writing to both parties within 10 working calendar days. The AGENT may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.

### **Duplicate Payment**

The AGENCY shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the state of Washington or any other party under any other contract or agreement, for the same services or expenses.

### **Governing Law**

This contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

### **Indemnification**

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless state, agencies of state and all officials, agents and employees of state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract.

"Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting there from. CONTRACTOR'S obligations to indemnify, defend, and hold harmless includes any claim by CONTRACTORS' agents, employees, representatives, or any subcontractor or its employees.

CONTRACTOR expressly agrees to indemnify, defend and hold harmless the state for any claim arising out of or incident to CONTRACTOR'S or any subcontractor's performance or failure to perform the contract. CONTRACTOR'S obligation to indemnify, defend, and hold harmless the state shall not be eliminated or reduced by any actual or alleged concurrent negligence of state or its agents, agencies, employees and officials.

CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officials, agents or employees.

### **Independent Capacity of the Contractor**

The parties intend that an independent contractor relationship will be created by this contract. The CONTRACTOR and his or her employees or agents performing under this contract are not employees or agents of the AGENCY. The CONTRACTOR will not hold himself/herself out as or claim to be an officer or employee of the AGENCY or of the state of Washington by reason hereof, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the CONTRACTOR.

### **Industrial Insurance Coverage**

The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, AGENCY may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. The AGENCY may deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by the AGENCY under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's right to collect from the CONTRACTOR.

### **Licensing, Accreditation and Registration**

The CONTRACTOR shall comply with all applicable local, state and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

### **Limitation of Authority**

Only the AGENT or AGENT'S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the AGENT.

### **Noncompliance with Nondiscrimination Laws**

In the event of the CONTRACTOR'S non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the AGENCY. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.



### **Nondiscrimination**

During the performance of this contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations and policies.

### **Privacy**

Personal information including, but not limited to, "Protected Health Information", collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless the AGENCY for any damages related to the CONTRACTOR'S unauthorized use of personal information.

### **Publicity**

The CONTRACTOR agrees to submit to the AGENCY all advertising and publicity matters relating to this contract wherein the AGENCY'S name is mentioned or language used from which the connection of the AGENCY'S name may, in the AGENCY'S judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of the AGENCY.

### **Records Maintenance**

The CONTRACTOR shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

CONTRACTOR shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the AGENCY, personnel duly authorized by the AGENCY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

### **Registration with Department of Revenue**

The CONTRACTOR shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

### **Right of Inspection**

The CONTRACTOR shall provide right of access to its facilities to the AGENCY, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

### **Savings**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the AGENCY may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at the AGENCY'S discretion under those new funding limitations and conditions.

### **Severability**

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

### **Site Security**

While on AGENCY premises, CONTRACTOR, its agents, employees or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

### **Subcontracting**

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the Department for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

### **Taxes**

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the CONTRACTOR or its staff shall be the sole responsibility of the CONTRACTOR.

### **Termination for Cause**

In the event the AGENCY determines the CONTRACTOR has failed to comply with the conditions of this contract in a timely manner, the AGENCY has the right to suspend or terminate this contract. Before suspending or terminating the contract, the AGENCY shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The AGENCY reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONTRACTOR or a decision by the AGENCY to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the AGENCY provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

### **Termination for Convenience**

Except as otherwise provided in this contract, the AGENCY may, by 10 calendar days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the AGENCY shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

### **Termination Procedures**

Upon termination of this contract, the AGENCY, in addition to any other rights provided in this contract, may require the CONTRACTOR to deliver to the AGENCY any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The AGENCY shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by the AGENCY, and the amount agreed upon by the CONTRACTOR and the AGENCY for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the AGENCY, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AGENT shall determine the extent of the liability of the AGENCY. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract.

The AGENCY may withhold from any amounts due the CONTRACTOR such sum as the AGENT determines to be necessary to protect the AGENCY against potential loss or liability. The rights and remedies of the AGENCY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the AGENT, the CONTRACTOR shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the AGENCY, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the AGENCY has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AGENT to the extent AGENT may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the AGENCY and deliver in the manner, at the times, and to the extent directed by the AGENT any property which, if the contract had been completed, would have been required to be furnished to the AGENCY;
6. Complete performance of such part of the work as shall not have been terminated by the AGENT; and
7. Take such action as may be necessary, or as the AGENT may direct, for the protection and preservation of the property related to this contract, which is in the possession of the CONTRACTOR and in which the AGENCY has or may acquire an interest.

### **Treatment of Assets**

1. Title to all property furnished by the AGENCY shall remain in the AGENCY. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the AGENCY upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this contract, shall pass to and vest in the AGENCY upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the AGENCY in whole or in part, whichever first occurs.
2. Any property of the AGENCY furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the AGENCY, be used only for the performance of this contract.
3. The CONTRACTOR shall be responsible for any loss or damage to property of the AGENCY that results from the negligence of the CONTRACTOR or that results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
4. If any AGENCY property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.
5. The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY prior to settlement upon completion, termination or cancellation of this contract.
6. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or SUBCONTRACTORS.

### **Waiver**

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the AGENCY.